

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY D. SMYTHE, JR.

Appeal No. 97-3218
Application 08/541,947 ¹

ON BRIEF

Before COHEN, NASE and CRAWFORD, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the refusal of the examiner to allow claim 1, as amended subsequent to the final rejection (Paper

¹ Application for patent filed October 10, 1995. According to appellant, this application is a continuation-in-part of application 08/505,797, filed July 21, 1995, now U.S. Patent No. 5,644,892, issued July 8, 1997.

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No. 9)², and from the final rejection of claims 2 and 7. However, in the answer (page 2), the examiner, in effect, withdrew the final rejection of claims 2 and 7 by indicating that they are allowed. Claims 3 through 6 and 8 through 14, all of the other claims in the application, likewise have been allowed by the examiner. Based upon the above, only the rejection of claim 1 is before us on appeal.

Appellant's invention pertains to an adjustable prefabricated drywall corner. Claim 1 reads as follows.

An adjustable prefabricated drywall corner comprising, in combination, a plurality of substantially flat sides foldably attached to form at least two seams, one of said flat sides adjustably foldable to form a third seam at a chosen angle with respect to said orthogonal seams.

As evidence of anticipation, the examiner relies upon the document specified below.

Rillo

3,350,825

Nov. 07, 1967

² On page 1 of the answer (Paper No. 12), the examiner indicated that the amendment would be entered.

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The following rejection is before us for review.

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Rillo.

The full text of the examiner's rejection and response to the argument presented by appellant appears in the first office action and answer (Paper Nos. 2 and 12), while the statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 11 and 13).

OPINION

In reaching our conclusion on the anticipation issue raised in this appeal, this panel of the board has carefully considered appellant's specification and claim 1, the applied patent to Rillo, and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follows.

We affirm the examiner's rejection of claim 1 under 35 U.S.C. § 102(b).

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Anticipation under 35 U.S.C. 102(b) is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed

invention. See In re Paulsen, 30 F.3d 1475, 1478-1479, 31 USPQ2d

1671, 1675 (Fed. Cir. 1994), In re Spada, 911 F.2d 705, 708, 15

USPQ2d 1655, 1657 (Fed. Cir. 1990), and RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). However, the law of anticipation does not require that the reference teach specifically what an appellant has disclosed and is claiming but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference. See Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The Rillo patent, assessed in its entirety, reveals to us that the drywall corner of appellant's claim 1 reads on the wallboard corner of the patent. More specifically, it is quite clear to this panel of the board that a side of the corner taught by Rillo is capable of being adjustably foldable to form a third seam at a chosen angle with respect to the other seams, e.g., the top side of the Rillo corner, intended for securement to the ceiling, is capable of being folded in half to form a seam and thereby effecting upwardly angled side halves. Alternatively, we

readily perceive that with one side of the standard three-sided corner piece of Rillo slit as disclosed by the patentee (from straight edge to apex), a side portion (formed by the slitting) is capable of being adjustably foldable to form a third seam at a chosen angle with respect to the other two seams. Thus, claim 1 is anticipated by the teaching of Rillo.

We are not persuaded by the argument of appellant as to the patentability of claim 1.

Appellant's focus is upon the perceived rigidity of the plastic drywall corner of Rillo (main brief, pages 10 and 11 and reply brief, page 2) which drywall corner appellant views as inherently "unfoldable" (main brief, page 12) or "impossible" to be adjustably foldable (reply brief, page 2).

Like the examiner (answer, pages 4 and 5), we do not share appellant's point of view as to the rigidity of the corner of Rillo or its being inherently unfoldable, as explained, *infra*.

Initially, we recognize that appellant instructs us (specification, page 9) that the present invention can be

practiced with the corner made of plastic material of a thickness

from "under 2 or 3 mils to well over 25 mils" (under .002 inch or .003 inch to well over .025 inch). Thus, a thickness of

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plastic material within the aforementioned range permits a side of the corner to be adjustably foldable to form a third seam at a chosen angle, as claimed.

Turning to the Rillo teaching, we find that the patentee specifies a plastic corner piece with the basic thickness of the plastic being, e.g. .005~~NN~~ to .010~~NN~~ (column 1, lines 50 through 53 and column 2, lines 37 through 40). Thus, the plastic material of Rillo falls on the low, thinner end of the acceptable thickness range specified by appellant for the present invention. Clearly, as was the case with the material thickness for appellant's corner, the plastic material thickness of the Rillo patent would permit a slit side of the corner to be adjustably foldable to form a third seam at a chosen angle, as now claimed. For this reason, we simply cannot agree with the argued and unsupported viewpoint of appellant as to the adjustable foldability of the corner of Rillo being "impossible".

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In summary, this panel of the board has affirmed the rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Rillo.

The decision of the examiner is affirmed.

AFFIRMED

IRWIN CHARLES COHEN)	
Administrative Patent Judge))
)	
)	
)	BOARD OF PATENT
JEFFREY V. NASE)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
MURRIEL E. CRAWFORD)	
Administrative Patent Judge)	

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Clifford H. Kraft
320 Robin Hill Drive
Naperville, IL 60540